

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Holwell, J.

NEW YORK STATE RESTAURANT
ASSOCIATION,

Plaintiff,

- against -

NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York State Department of Health
and Mental Hygiene,

Defendants.

: No. 2007 Civ. 5710

: RJH

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/15/07

**ORDER TO SHOW CAUSE ON PLAINTIFF'S MOTION FOR
DECLARATORY RELIEF AND A PRELIMINARY INJUNCTION**

Upon reading the Complaint filed in this action, and the declarations of the following:

Peter L. Zimroth, dated June 14, 2007; Deborah Demuth, executed on June 13, 2007; Rick Colón, executed on June 13, 2007; Julie Haugen, executed on June 13, 2007; Hector A. Muñoz, executed on June 13, 2007; Jamie Richardson, executed on June 13, 2007; Kevin Burnett, executed on June 13, 2007; Michael Liewen, executed on June 13, 2007; Kathleen LeClair, executed on June 13, 2007, Jimmy Fitzgerald, executed on June 13, 2007, and Stephen Horn, executed on June 13, 2007, and the exhibits attached thereto, together with the accompanying Memorandum of Law, dated June 15, 2007, and accompanying Appendix, it is hereby:

ORDERED that Defendants New York City Board of Health, New York City

Department of Health and Mental Hygiene, and Commissioner Thomas R. Frieden show cause before the Honorable Richard Holwell at Room 17B, United States District Courthouse, 500 Pearl

Street, New York, New York 10007, on the 27 day of June, 2007, at 5:00 P.M. a.m./p.m., or as soon thereafter as counsel may be heard, why an order should not be entered granting Plaintiffs' motion for (i) a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining and restraining Defendants from enforcing New York City Health Code section 81.50 in violation of the First and Fourteenth Amendments; and (ii) a declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure that New York City Health Code section 81.50 is preempted by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration; and it is

FURTHER ORDERED that service of this Order, together with the Complaint, declarations, exhibits and Memorandum of Law filed in connection therewith, be made upon Defendants c/o the Law Department of the City of New York, 100 Church Street, New York, New York, by overnight courier, such service to be made within twenty-four (24) hours after this Order has been signed, shall constitute good and sufficient service of this motion upon Defendants; and

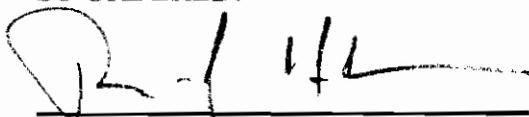
FURTHER ORDERED that any opposition papers shall be filed and served by hand by
4:00
no later than ~~5:00~~ p.m. on the ~~25~~ day of June, 2007; and it is
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FURTHER ORDERED that any reply papers shall be filed and served by hand by no

later than 12:00 p.m. on the 26 day of June, 2007.

Dated: New York, New York
June 15, 2007

SO ORDERED:



United States District Judge

